

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*Methody  
PL2  
29849*

**FILE:** B-216746.2

**DATE:** November 26, 1984

**MATTER OF:** Allen and Vickers, Inc.

**DIGEST:**

1. Protest of allegedly restrictive specification is untimely where initial protest with contracting agency was filed after bid opening.
2. Bidder had reasonable opportunity to file protest before bid opening where bidder received solicitation 1 day before bid opening and was able to prepare and submit its bid before bid opening.

Allen and Vickers, Inc. protests the award of a contract for laundry equipment to Columbia Laundry Machinery under invitation for bids (IFB) No. 263-84-B(83)-0172, issued by the National Institutes of Health. We dismiss the protest as untimely.

The solicitation was for one steam-heated, four-roll flatwork ironer, American Hypo II brand or equal, and one folder, Central Finishing Systems Model ELX or equal. The protester, which offered a two-roll ironer, asserts that the specification requiring a four-roll ironer unduly restricted competition.

Generally, to be timely under our Bid Protest Procedures, a protest must be filed with the agency or our Office prior to bid opening, if, as here, it is based on alleged improprieties in the solicitation which are apparent on the face of the solicitation. 4 C.F.R. § 21.2(b)(1) (1984). Where a protest is filed initially with the contracting agency, a subsequent protest to this Office will be considered only if the initial protest to the agency was timely. Shell Computer Systems, Inc., B-203986, July 23, 1981, 81-2 CPD ¶ 58.

Here, bid opening was September 17, 1984. Allen and Vickers filed a protest with the agency by letter dated October 3, which, according to the protester,

030638

confirmed an oral protest it lodged with the agency by telephone on October 1. The protest to this Office was filed on October 15. Because the allegedly restrictive specification, which is the basis of the protest, was apparent prior to bid opening, the initial protest to the agency, filed after bid opening, would under usual circumstances be untimely.\* As a result, Allen and Vickers' subsequent protest to this Office would also be untimely.

The protester, however, contends that it did not have sufficient time to file a protest before bid opening because it did not receive the solicitation until 1:00 a.m. on September 16, with bid opening set for the next day at 3:00 p.m. We have recognized an exception to the requirement that a protest based on alleged improprieties in the solicitation be filed before bid opening, when, as a result of extremely limited time periods, circumstances do not permit filing before bid opening. See, e.g., Ampex Corporation, B-190529, Mar. 16, 1978, 78-1 CPD ¶ 212 (time for receipt of proposals was practically simultaneous with the solicitation, the entire process apparently taking only 10 minutes); Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD ¶ 149 (protester received IFB amendment less than 3 hours before bid opening).

Here, the protester received the solicitation the day before bid opening and was able to prepare and submit its bid before bid opening. The protester offers no reason why it was unable also to file its protest before bid opening. In view of the fact that the protester received the solicitation in sufficient time to prepare and submit its bid in a timely manner, we believe that the protester had a reasonable opportunity to file its protest before bid opening, either with the agency or this Office. See Alexandria Graphics & Reproduction Service, B-200249, Oct. 7, 1980, 80-2 CPD ¶ 251. Because the protester did not do so, we dismiss its protest as untimely.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel

---

\*We need not decide whether the protest to the agency was initially lodged by telephone on October 1, as the protester contends, since both the telephone conversation and the subsequent written protest to the agency took place after bid opening.